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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,314	12/28/2000	Peiguang Zhou	11710-0200	9088

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EXAMINER
MCCLENDON, SANZA L

ART UNIT	PAPER NUMBER
1711	

DATE MAILED: 09/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/751,314	ZHOU ET AL.	
	Examiner	Art Unit	
	Sanza L McClendon	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 June 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7,11-24 and 28-33* is/are rejected.

7)☒ Claim(s) *8-10 and 25-27* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Response to Amendment

1. In response to the Amendment received on June 24, 2003, the examiner has carefully considered the amendments.

Response to Arguments

2. Applicant' s arguments, see paper number 18, filed June 24, 2003, with respect to the rejection(s)of claim(s) 1, 11-15, 18-23, and 31-33 under 102(b) as being anticipated Ruutu et al (WO 96/13434) and the rejection of claims 2, 16, and 29 as being unpatentable under 35 USC103 (a) has been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Brandon et al (5,916,203), in addition to a statutory double patenting rejection. The indicated allowability of claims 3-7 and 17 is withdrawn in view of the newly discovered reference(s) to Brandon et al (5,916,203). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-7, 11-19, 21, 23-24, and 29-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Brandon et al 5,916,203).

Brandon et al teaches composite materials with elasticized portions and a method of making the same. Said composite material comprises a temperature sensitive elastic material,

which is generally in a latent, non-activated state at ambient temperatures and further includes a microwave-sensitive material located on selected regions of the elastic material—see column 3, lines 52-57. This appears to anticipate claims 1 and 15. Said microwave sensitive material absorbs and converts incident microwave energy into heat causing the temperature of the microwave sensitive material to increase to a point where it causes the temperature sensitive elastic material to reach its maximum relaxation temperature and retract or elastically activate—see column 3, lines 62 to end to column 4, lines 8. This anticipates claim 23. Said temperature sensitive elastic material can be materials comprising segmented copolymers such as those comprising alternating segments of polyamide block and polyether blocks—see column 4, lines 50-56. This appears to anticipate claims 2, 16, and 29. In addition, said materials can be selected from a wide selection of web material, such as film materials, non-woven materials, foam materials, natural fibers, and synthetic fibers or combinations thereof—see column 4, lines 25-37. This appears to anticipate claims 13, 19, and 32, wherein 14 in Figure 1, appears to anticipate claims 14, 21, and 33. Said microwave sensitive material can be any material affected by microwave energy and can be in a variety of forms, such as coating or layers of adhesive or a liquid solution, such as those found in column 5, lines 35. Per example, Brandon et al teaches using a polypropylene glycol solution as the microwave sensitive material. This appears to anticipate claims 3-4, 17, and 30. Said microwave sensitive material can be applied by any conventional method, such as spraying, printing, brush coating, or the like. This appears to anticipate claims 4, 11-12, 18, and 31. Brandon et al teaches that it is desirable to have a web speed of at least about 200 meters per minute or more desirably at a speed of at least about 300 meters per minute, which converts to speeds of at least 656 ft. per minute to at least about 984 ft. per minute. This appears to anticipate claims 4-7 and 24.

Claim Rejections - 35 USC § 102/ 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the

subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claim 28 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Brandon et al (5,916,203) taken with a teaching reference (product description for a Sharp Carousel microwave oven).

Brandon et al does not expressly teach using microwave radiation that is powered ate 900 W. However Brandon et al teaches using a frequency of at least 2450 MHz and a power level from at least about, desirably, 500 watts for about 0.08 to 0.8 seconds. Additionally per the example, Brandon et al teaches treating an elastomeric composite material according to the method of the invention and treating with microwaves from a conventional microwave oven that is commercially available from the Sharp Corporation for about 5 seconds. Although Brandon et al does not expressly teach the power generated from said conventional microwave the product description for a Sharp carousel-type microwave teaches these type-microwave ovens have a power of at least 950W. Thusly since these type of microwave ovens can be powered up to 950 Watts, it would have been obvious for a skilled artisan to prepare a composite laminate according to the invention of Brandon et al, which teaches using microwave radiation at a energy of at least 2450 Mhz in a conventional microwave oven apparatus that can have a power of at least 950W, per the product description (see PTO-892), for at least 5 seconds (see example). The motivation would have been to prepare a composite laminate having elastomeric portions of controlled shrinkage patterns as taught by Brandon et al with the expectation of adequate success. This appears to read on claim 28, however in the alternative because Brandon et al teaches using a Sharp Carousel commercially available microwave oven, which can have a power wattage of at least 950, and teaches that the microwave energy should be supplied at 2450 Mhz and exposing said treated composite for at least 5 second, per the example, claim 28 is deemed to be, in the alternative, anticipated by the reference.

Double Patenting

7. Claims 15-23 of this application conflict with claims 15-23 of Application No. 10/227,688. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

8. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

9. Claims 15-23 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 15-23 of copending Application No. 10/227,688. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Allowable Subject Matter

10. Claims 8-10 and 25-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to teach a method of making a patterned material comprising the

steps of claim 1, where the power of said radiation is greater than those listed in claims 8-10 and 25-27.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sanza L McClendon whose telephone number is (703) 305-0505. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (703) 308-2462. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0657.

Sanza L McClendon
Examiner
Art Unit 1711

SMc

James J. Seidleck
Supervisory Patent Examiner
Technology Center 1700